

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

v.

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS, et al.,

Defendants

No. 41 CV 1395 (WCC)

In the Matter of the Application of HICKS
BROADCASTING OF INDIANA, LLC, et al.,

Applicant,

For the Determination of Reasonable License Fees.

CONSENT JUDGMENT

WHEREAS, the parties to the above-captioned proceeding having consented to have this Court (Conner, J.) hear and determine the application of applicants Hicks Broadcasting of Indiana, LLC, et al., for reasonable license fees for licenses from the American Society of Composers, Authors and Publishers ("ASCAP") for periods commencing January 1, 2001; and this Court having issued its Final Order on October 14, 2004, approving the ASCAP 2004 Radio Station License Agreement ("ASCAP License Agreement"), covering the period January 1, 2001 through December 31, 2009 ("the License Period"); and

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WHEREAS, pursuant to Paragraph 7 of the Final Order this Court retains continuing jurisdiction for the purpose of enforcing the Final Order, as well as “the terms, conditions and obligations of the ASCAP License Agreement”; and

WHEREAS, Encarnacion A. Guerra, doing business as Guerra Enterprises, is the F.C.C. licensee of radio stations KRRG-FM and KJBZ-FM -Laredo, Texas (collectively referred to as “the Stations”); and

WHEREAS, Belinda Guerra, having entered into an agreement with Encarnacion A. Guerra, is the lessee and Chief Executive Officer of the Stations; and

WHEREAS, Guerra Enterprises, Encarnacion A. Guerra, and Belinda Guerra are collectively referred to herein as “Guerra;” and

WHEREAS, the Stations were listed among the “Bound Stations” referred to in Paragraph 2 of the Final Order; and

WHEREAS, pursuant to Paragraph 2 of the Final Order, Guerra was offered and accepted ASCAP License Agreements for the Stations covering the License Period; and

WHEREAS, as of the entry of this Judgment, Guerra owes ASCAP a combined total of \$198,836.39 to ASCAP for the Stations, representing unpaid license fees, late payment charges and out-of-pocket collection costs for periods through December 31, 2008; and

WHEREAS, Guerra has agreed to the entry of this Consent Judgment;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Pursuant to the terms and conditions of the ASCAP License Agreements for the Stations, Guerra owes a total of \$198,836.39 to ASCAP, representing license fees, late payment charges, and out-of-pocket collection costs for periods through December

31, 2008, and judgment is hereby entered against Guerra Enterprises, Encarnacion A. Guerra, and Belinda Guerra, jointly and severally, in favor of ASCAP in such amount.

2. Guerra shall pay to ASCAP the amount of \$198,836.39 pursuant to the following payment schedule:

- a. By January 15, 2009, Guerra shall pay ASCAP a total of \$17,000.00 through the following checks, receipt of which is acknowledged by ASCAP: Check No. 4545, dated November 18, 2008 in the amount of \$5,000.00; Check No. 5695, dated November 18, 2008 in the amount of \$5,000.00; Check No. 4546, dated November 28, 2008 in the amount of \$3,500.00; and Check No. 5696, dated November 28, 2008 in the amount of \$3,500.00.
- b. By February 15, 2009, Guerra shall pay ASCAP a total of \$7,000.00 through the following checks, receipt of which is acknowledged by ASCAP: Check No. 4547, dated December 28, 2008 in the amount of \$3,500.00; and Check No. 5697, dated December 28, 2008 in the amount of \$3,500.00.
- c. By March 15, 2009, Guerra shall pay ASCAP a total of \$7,000.00 through the following checks, receipt of which is acknowledged by ASCAP: Check No. 4548, dated January 28, 2009 in the amount of \$3,500.00; and Check No. 5698, dated January 28, 2009 in the amount of \$3,500.00.
- d. By April 15, 2009, Guerra shall pay ASCAP a total of \$7,000.00 through the following checks, receipt of which is acknowledged by

ASCAP: Check No. 4549, dated February 28, 2009 in the amount of \$3,500.00; and Check No. 5699, dated February 28, 2009 in the amount of \$3,500.00.

- e. By May 15, 2009, Guerra shall pay ASCAP a total of \$7,000.00 through the following checks, receipt of which is acknowledged by ASCAP: Check No. 4550, dated March 28, 2009 in the amount of \$3,500.00; and Check No. 5700, dated March 28, 2009 in the amount of \$3,500.00.
- f. By June 15, 2009, Guerra shall pay ASCAP a total of \$7,000.00 through the following checks, receipt of which is acknowledged by ASCAP: Check No. 4551, dated April 28, 2009 in the amount of \$3,500.00; and Check No. 5701, dated April 28, 2009 in the amount of 3,500.00.
- g. The balance of \$146,836.39 plus accrued interest shall be due to ASCAP by July 15, 2009, or as may be provided in an agreement to be negotiated and executed between ASCAP and Guerra. Should the parties be unable to reach agreement as to the payment of the remaining balance of \$146,836.39 plus accrued interest, such amounts shall immediately be due and payable to ASCAP and execution for that amount shall issue without further notice.

3. During the remainder of the term of the License Period, Guerra agrees to pay to ASCAP current monthly license fees in the full amount owed and on a timely basis, pursuant to the Stations' ASCAP License Agreements. Failure by Guerra to

pay such fees, or failure by Guerra's bank to honor any of the checks referred to in Paragraph 2 above, shall enable ASCAP to have execution issued immediately and without further notice to collect the balance then due pursuant to this judgment.

4. Interest on this judgment shall accrue at the rate of six percent (6%) per annum (simple interest) from the date of entry.

Dated: Jan. 14, 2009
White Plains, New York

Miriam E. Conner
Sr. United States District Judge

We consent to the entry of the foregoing consent judgment:

Dated: Jan 12, 2009

**AMERICAN SOCIETY OF
COMPOSERS, AUTHORS AND
PUBLISHERS**

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Dated: Jan 8, 2009

**ENCARNACION A. GUERRA, D/B/A
GUERRA ENTERPRISES**

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BELINDA GUERRA

Belinda Guerra
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